

Chapter 12.20

CABLE TELEVISION SYSTEM PERMITS

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12.20.010 General provisions.

A. "City" as used in this Chapter shall mean the City of Delta, Colorado, the Delta City Council, City Manager or any other officer, employee, or body thereof authorized to act on behalf of the City for purposes of the administration, enforcement or implementation of this Chapter.

B. "Company" as used in this Chapter shall mean any person or legal entity granted a cable television permit pursuant to this Chapter. (Ord. 10, §1, 1993)

12.20.020 Permit required.

A. It shall be unlawful for any person to use any City owned street, alley, right-of-way, easement, power pole or other property owned by the City for purposes of the operation of a cable television (CATV) system or the installation or location of CATV lines, poles, cables or other facilities without a CATV system permit granted in accordance with the provisions of this Chapter.

B. Any CATV system permit issued hereunder shall be nonexclusive and other CATV system permits may be issued by the City.

C. No CATV system permit shall be granted until the City Council determines that:

1. The applicant, its proposed system and operation are financially viable.

2. The applicant has the financial, legal and technical ability and necessary experience to successfully operate a CATV system and to provide the services, facilities and equipment as set forth in the applicant's proposal.

3. The applicant and its principals are of good moral character.

4. The applicant is proposing adequate service to promote public convenience and necessity, and the proposal is reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

5. All requirements of this Chapter and other applicable requirements of City, federal and state law have been and will be met.

6. For renewals, the applicant has substantially complied with the material terms of the existing franchise and applicable law; and the quality of operator's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs.

D. Upon receipt of an application for a permit or renewal thereof, the City Council may conduct such investigation and hold such hearings as it deems necessary and proper to determine if the criteria of this Section have been met. Reasonable notice of any hearings scheduled shall be given to the applicant. Any procedures required by applicable state or federal law shall be followed.

E. No CATV system permit may be assigned, except that an assignment occurring as a result of a corporate merger or restructuring, or to an affiliate, or by reason of sale may be allowed with the written consent of the City Council. Such consent shall be granted only upon a showing satisfactory to the Council that the criteria of subsection 12.20.020(C) will be met by the assignee. If the permit or the cable TV system is transferred by bankruptcy, receivership, assignment for the benefit of creditors, foreclosure, or by operation of law, this permit shall terminate one hundred twenty (120) days thereafter unless an extension is granted by the City Council to allow time for application for a new permit to be filed. Nothing in the

foregoing is intended to forbid or require the City's consent for the pledge of the permit or Company's property to secure an indebtedness whether by mortgage, transfer in trust, or other hypothecation. (Ord. 10, §1, 1993)

12.20.030 Terms of permit.

A. Any permit granted pursuant to this Chapter shall be valid for a term of ten (10) years unless terminated prior to ten (10) years in accordance with other provisions of this Chapter. The ten (10) year term may commence upon approval of the permit by the City Council or at the end of the current permit as determined by the City Council.

B. The permit shall be issued subject to conditions stated thereon to include, at a minimum, significant features of the applicant's proposal, including proposed service, customer service, and other significant elements. (Ord. 10, §1, 1993)

12.20.040 Application for new CATV permit.

A. Applications for a new permit (not including renewals) shall be made on forms provided by the City. The burden shall be on the applicant to prove that it meets the criteria for issuance of the permit as specified in Section 12.20.020 above. The applicant may submit such information as it desires to meet its burden, but at a minimum the application form shall be fully completed and accompanied by the following:

1. An application fee in the amount of two thousand dollars (\$2,000).

2. Complete financial data of the applicant, including two (2) years audited financial statements and income tax returns.

3. A complete description of the applicant's organizational structure, including the names and addresses of the applicant's officers, principal shareholders or owners and other principals of the applicant. The same information with respect to any parent subsidiaries or interlocking companies or entities shall be provided.

4. The general description of all aspects of the proposed operation, including services to be provided, programming, office hours and location, etc.

5. The proposed rates along with a guarantee that these rates will not be increased for a period of at least two (2) years following original initiation of service.

6. The complete plans for the construction of the proposed system and proposed system map unless the application is for a change of ownership of an existing system, in which event the existing system maps should be submitted.

7. A ten (10) year projected operations pro forma.

8. A list of other cable television franchises or permits held by the applicant, its parent, subsidiaries, or interlocking companies.

9. Information sufficient to show compliance with applicable requirements of federal or state law.

B. The City reserves the right to require any additional information necessary for its determination of whether or not the applicable criteria for granting the permit are met.

C. Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Council to grant the permit, acknowledges the validity of all requirements of this Chapter, and certifies that the applicant will comply with all provisions of this Chapter. (Ord. 10, §1, 1993)

12.20.050 Construction bond.

A. Within thirty (30) days after approval of the permit for a new system, the company shall file with the City a corporate surety bond in a form acceptable to the City Attorney in the amount of one hundred thousand dollars (\$100,000) to guarantee the timely construction and full activation of the proposed cable system within three (3) years of the date the Council grants the permit.

B. The bond shall provide that the City may recover against it, jointly and severably from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the company to fully install and activate the cable system in accordance with the provisions of this Chapter.

C. A bond is not required for a permit granted as a renewal or transfer of ownership of an existing activated CATV system. (Ord. 10, §1, 1993)

12.20.060 Renewal of existing permit.

A. Applications for renewal of an existing CATV system permit shall be submitted on forms provided by the City and at a minimum accompanied by the following:

1. A renewal application fee in the amount of two hundred dollars (\$200.00).

2. The company's existing rate schedule if not previously filed with the City.

3. Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Council to grant the permit, acknowledges the validity of all requirements of this Chapter, and certifies that the applicant will comply with all provisions of this Chapter subject to changes in applicable law.

4. Information sufficient to show applicable requirements of federal and state law have been met.

5. A complete description of proposed services, facilities, customer service facilities.

B. The City may require any other additional information it deems reasonably necessary to determine whether or not the applicant for renewal meets the criteria set out in Section 12.20.020 above and applicable law. (Ord. 10, §1, 1993)

12.20.070 Permit revoked.

A. Any permit issued under the Chapter may be revoked by the City Council if it determines that the company has substantially failed to comply with any material provision of this Chapter or the permit, or is in violation of any applicable provision of any federal, state or local law, and the company fails to remedy the situation as provided in this Section.

B. The City shall provide the company with at least thirty (30) days notice of the hearing on the alleged failure or violation during which time the company may remedy the situation. If the Council determines following the hearing that the grounds specified in subsection (A) above exist, it shall set a reasonable time period in which the company may remedy the situation. If the company fails to remedy the situation in such period, the Council may revoke the permit or take such other action as it deems necessary. (Ord. 10, §1, 1993)

12.20.080 Acquisition of the system by the City or removal.

A. City to Purchase System:

1. If the permit is revoked or renewal is denied by the City Council, the City may acquire the system for its fair market value as a going concern with no value allocated to the franchise itself.

2. The City shall deliver written notice to the company at its Delta office of its intent to purchase the system. Within ten (10) days after delivery of the notice, the company and the City shall each appoint an arbitrator who shall be qualified and have experience with appraisals of CATV systems. These arbitrators shall within fifteen (15) days thereafter appoint a third arbitrator. The arbitrators shall then determine fair market value as a going concern of the property to be acquired and make a report to the City and the company of their determination within sixty (60) days of the date of the notice of intent to purchase.

3. The City shall have sixty (60) days after receiving the report on the value to make a final determination whether or not to purchase the system. If the City elects to

purchase the system it shall specify the closing date, which shall be within 180 days thereafter, at which time the payment determined in accordance with this Section shall be made to the company and the system transferred to the City. In the time prior to closing, the company shall continue to operate the system and maintain it in good working order.

4. If the City elects not to purchase the system, any permit still in effect shall remain in effect.

5. The expenses of the third arbitrator and common expenses of the three (3) arbitrators shall be shared equally by the City and the company. The expenses of the arbitrator appointed by each shall be paid by the City and the company respectively.

6. If the company unreasonably fails or refuses to appoint an arbitrator or otherwise comply with this Section, the City may seek a court order enforcing compliance with this Section.

B. The City shall not be liable for severance damages on account of portions of the company's system located outside the City limits which will be severed because of the purchase by the City; however, the City will, upon request of the company, purchase such severed portions of the system located outside the City on the same terms as it may purchase the system within the City.

C. In the event of termination of a permit without renewal or revocation of the permit, if the City does not elect to acquire the system in accordance with the procedures outlined in subsection (A) above, the City may require the company to remove all of its cables, lines and facilities from City streets, alleys and easements within a period of six (6) months, repairing and restoring any damage caused thereby. The company may also sell the system to a third party and the time to remove the system shall be tolled while a new permit application is pending. If a permit is granted to a new owner, the company property can be left in place for the new owner. If the company fails to remove such components within that period, they shall become the property of the City. (Ord. 10, §1, 1993)

12.20.090 Use of streets, alleys and easements.

A. Any permit issued under this Chapter gives the company the right to use City owned streets and alleys, and those easements owned by the City which, by the terms of the easement, may be used for cable television facilities. Such use shall allow the installation and maintenance of wire, conduits, cables, poles and other appurtenant facilities used in the distribution and transmission of cable television. Such use shall be subject to the conditions of this Section. Nothing

herein shall limit the City's rights to vacate, sell or encumber any City owned property.

B. The location of the lines and other facilities shall be designed to minimize interference with other uses of the City streets, alleys and easements. The company shall use the poles of the telephone company or power company or City power poles whenever possible for its lines subject to the requirements of this Section for undergrounding. The company shall not erect poles of its own unless power or telephone poles are unavailable and the City determines that undergrounding is technically infeasible or economically too costly.

C. The company shall design, construct and maintain all its facilities in accordance with good engineering and safety practices.

D. The company shall submit to the City prior to construction, plans showing the location of all proposed lines to be installed in City streets, alleys or easements. No facilities or lines may be installed therein until the location has been approved by the City.

E. The City may require that any lines or other facilities be relocated, removed, or temporarily raised or relocated whenever necessary for the use, operation, maintenance, construction of City streets, alleys and easements or other City facilities. The cost of removal or relocation shall be borne by the company.

F. No excavation may be made in any City street, alley or easement without obtaining a permit from the City in compliance with the provisions of the City's Excavation Permit Ordinance. The company, at its expense, shall repair any damages or disturbance to any public streets, alleys or easements, or pavement, sidewalk or improvement thereon caused by the company's operations.

G. The company shall furnish copies of its "as built" strand map and keep an updated copy on file with the City.

H. All cables and lines shall be constructed underground when required by City subdivision regulations or when located in areas where neither existing power or telephone poles are available for use.

I. The company shall convert any of its overhead lines to underground lines upon the request of any person willing to pay for the cost of such conversion, or if the costs are paid in accordance with provisions of C.R.S. 29-8-101 et. seq., the Colorado Underground Conversion of Utilities Act.

J. In the event that an overhead cable route is eliminated because of inability to continue the use of the poles of the City, the telephone company or the power company, the company shall underground its lines and facilities if the other

utility is undergrounding its lines and facilities. If such is not the case, then the company may install its own overhead pole lines if the City determines that undergrounding is technically infeasible or too expensive.

K. Use of the City's power poles by the company shall be allowed only pursuant to a separate agreement.

L. Company tree trimming shall comply with the City tree ordinance and tree care specifications. (Ord. 10, §1, 1993)

12.20.100 Rates.

A. Rates charged by the company shall be non-discriminatory and shall allow a fair return on investment taking into account appropriate costs to the extent consistent with Federal rules and regulations.

B. The City shall have the right to regulate rates except to the extent superseded by federal or state law as in effect from time to time.

C. No rate subject to regulation by the City shall be put into effect unless the proposed rates are filed with the City sixty (60) days in advance of the proposed effective date. The City Council shall review the rates and may set a formal hearing to consider them. Following the hearing, Council shall enter an appropriate written order. No rate shall go into effect until authorized by written decision of the Council, which shall be issued within one hundred twenty (120) days from the original notice unless otherwise agreed by the company. (Ord. 10, §1, 1993)

12.20.110 Permit fee.

A. In consideration of the rights and privileges granted under a permit, the company shall pay to the City an amount equal to three percent (3%) of its gross receipts from its CATV operations within the City. Such gross receipts shall not include sales taxes collected on behalf of the City or State but shall include all service revenue and standard collection charges from such operations within the City.

B. Payments shall be made quarterly to the City. Payments are due within 45 days after each three (3) months quarter of the calendar year, with the first payment for each year due on May 15. This permit fee is in addition to any and all taxes, fees or charges of general applicability imposed by the City or other governmental entity. (Ord. 10, §1, 1993)

12.20.120 Insurance and liability.

A. The company shall fully indemnify, defend and hold harmless the City and its officers, boards, commissions and employees against any and all claims, suits, actions,

liabilities, and judgments for damages, including but not limited to expenses for reasonable legal fees arising out of or through the acts or omissions of the company, its officers or employees, or the company's cable television operations under the CATV system permit, including claims alleging a violation of civil rights or anti-trust laws.

B. The company shall maintain throughout the term of the permit comprehensive general liability insurance listing the City as an additional insured in amounts equal to or exceeding \$1,000,000 combined single limit for bodily injury, personal injury, and property damage. Certificates of the insurance shall be filed with the City for each policy containing an endorsement that it cannot be cancelled unless thirty (30) days written notice of cancellation is provided to the City. The company shall also maintain adequate fire and casualty insurance, and workmen's compensation insurance.

C. In the event the company at any time or in any manner or proceeding set up against the City any claim or proceeding challenging any provision of this Chapter or the grant of the permit pursuant to this Chapter as being invalid for any reason other than inconsistency with federal or state law or regulation pursuant thereto, the City may terminate any permit issued hereunder. (Ord. 10, §1, 1993)

12.20.130 Service area and line extensions.

A. The company shall be required to provide service to all persons within the City limits of Delta desiring service, subject to the exceptions of this Section.

B. The company shall not be required initially to serve any customers or area for which it requested authority not to serve in its initial application if the City Council as part of the application review finds that service to any such area or customer is technically infeasible or economically unjustifiable.

C. Following initial construction and activation of the system, trunk lines shall be extended at the company's expense and service made available to any person within the City limits requesting service including persons owning new construction, or annexed subsequently, if any of the following criteria are met:

1. The building for which service is requested is within one hundred feet (100') of a building which is receiving CATV service from the company.

2. Service is requested from ten (10) or more potential customers who are located in proximity to an existing trunk cable in a density greater than ten (10) customers per one thousand three hundred twenty feet (1,320') of cable required to

be extended within the public right-of-way or easement to be able to serve such potential customers.

D. Whenever any person is willing to pay the costs of extending the system to serve such person, the company shall provide him with service.

E. All cable and appurtenant facilities installed pursuant to this Section shall be company property. (Ord. 10, §1, 1993)

12.20.140 Minimum service and operation requirements.

A. The company shall maintain a local business office within the City open at least eight (8) hours a day, five (5) days per week. Complaints from consumers shall be responded to promptly and courteously by the company and a log listing all complaints, service requests and their disposition shall be kept by the company available for inspection by the City subject to applicable consumer privacy laws.

B. The company shall at all times comply with the regulations and laws and standards of the State of Colorado and the United States and any of their agencies.

C. Construction and the operation of the system shall comply with the City's Building and Electrical Codes and any other applicable regulations and ordinances.

D. The company shall provide a basic service tier which shall include a minimum of eleven (11) channels unless the company is unable to obtain consent to retransmit the signal of a broadcasting station on commercially reasonable terms. In such event, the company shall make best effort to replace such programming with alternate programming.

E. The system shall be designed to provide subscribers with a uniform high quality of reception throughout the City and shall be operated continuously. The system shall have a minimum capacity of not fewer than thirty-five (35) video channels.

F. The company shall provide reasonably continuous service to all subscribers to the extent that to do so is within the company's control. In the event the company fails to operate the system for five (5) days, the City shall have the right to operate the system until such time as a new operator is approved or the City acquires the system and shall be reimbursed for any costs or expenses incurred as a result of the company's failure to operate the system, unless such failure is on account of technical impossibility, acts of God, disaster, war or other such reasons beyond the company's control. Financial problems, misfeasance or malfeasance of the company or its employees shall be no excuse for failure to operate.

G. The company shall, to the extent technically and economically feasible, take advantage of new technical

developments in the field of transmission of television or radio signals which would afford the company the opportunity to be more efficient and to provide better service, and shall, as far as reasonably practical and economical, maintain the current state of the art with regard to cable television systems.

H. The company shall provide service to customers who have installed their own cable television wiring as long as such wiring and facilities are installed in compliance with the specifications and standards of the company.

I. The company shall temporarily move or relocate any of its lines, cables or other facilities when necessary for construction, moving a building or otherwise, if the expense of such operation will be paid by the person requesting it in advance.

J. The company shall have available lock out devices for customers who desire them. (Ord. 10, §1, 1993)

12.20.150 Education and government access.

A. The City shall be authorized to make emergency use of the company's system and the company shall install a capability for emergency messages to be transmitted on all channels simultaneously. The City shall hold the company, its employees and officers harmless from any claims arising out of the emergency use of its facilities by the City, including but not limited to reasonable attorneys fees and costs.

B. The company shall provide two (2) educational and governmental access channels for use by the City. (Ord. 10, §1, 1993)

12.20.160 Financial reports and access to records.

A. The City may inspect and copy at all reasonable times business and financial records of the company appropriate for regulating rates or auditing compliance with this Chapter or any permit issued hereunder or any information filed with any federal or state agency which is available for public inspection.

B. The company, within ninety (90) days following request from the City, shall submit any written report which the City might reasonably request concerning its compliance with the provisions hereof.

C. The company shall keep on file with the City its current rates and service policies.

D. The City shall restrict public access to any documents provided to the City and claimed to be confidential by the company to the extent allowed by law. (Ord. 10, §1, 1993)

12.20.170 Reservation of rights. The City reserves the right to adopt additional regulations and ordinances governing the operation of CATV systems in accordance with the lawful exercise of its police power, and to amend this Chapter as appropriate based upon changes required by federal or state law. Other changes to this Chapter shall not apply to permits existing at the time of adoption unless otherwise agreed by the permittee. Upon renewal all prior amendments shall apply. (Ord. 10, §1, 1993)

12.20.180 Notices. Any notices required to be given to the City shall be delivered to the City Manager's office at City Hall. Notices to the company may be delivered to the local business office required to be kept by the company and mailed to:

TCI Cablevision of Colorado, Inc.
P.O. Box 5630
Denver, CO 80217-5630
Attn: Legal Department

(Ord. 10, §1, 1993)

12.20.190 Free service. The company shall provide free of charge one cable television outlet and basic and expanded basic service channels to City Hall, Heddles Recreation Center, each public school located within the City, each public library within the City, and the Delta Fire District's fire house. This shall not require the company to provide channels which are premium pay channels and the extension of service shall be subject to the limits specified in Section 12.20.130. (Ord. 10, §1, 1993)

12.20.200 Penalty.

A. It shall be unlawful to violate any provision of this Chapter. Any person convicted of such violation shall be subject to a fine in an amount of up to \$1,000.00, as determined by the Municipal Court. Each day a violation continues shall be deemed a separate offense subject to the penalty provided for in this Section.

B. Prior to bringing an action to enforce a penalty in Municipal Court against the company or its officers or employees, the City shall give written notice of the violation to the company. If the company fails to correct the violation within fifteen (15) days of delivery of the notice to the local company office, the City may bring an action in the Municipal Court under this Section. (Ord. 10, §1, 1993; Ord. 18, §2, 1997)